

August 8, 2013

James Harrison  
Remcho, Johansen & Purcell, LLP  
201 Dolores Avenue  
San Leandro, CA 94577

Re: Your Request for Advice  
**Our File No. I-13-106**

Dear Mr. Harrison:

This letter responds to your request for advice regarding the “behested payment” provisions of the Political Reform Act (the “Act”)<sup>1</sup> and their applicability to certain activities by members of the Legislature. Because your request is general in nature and does not apply to a specific member of the Legislature, we are treating the request as one for informal assistance. (Regulation 18329(b)(2)(A) and (c)).<sup>2</sup>

### QUESTION

Does a member of the Legislature have reporting requirements under the “behested payment” rule in Section 82015(b)(2)(B)(iii) when he or she has communicated with a local, state or federal government agency to express his or her support for a payment to be made to a local government agency within the legislator’s district and the payment is used by the local government agency for official agency business within the district?

### CONCLUSION

No. Under Regulation 18215.3(c), a member of the Legislature does not have reporting requirements under the “behested payment” rule in Section 82015(b)(2)(B)(iii) when he or she

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity set forth in either Section 83114(a) or (b). (Regulation 18329(c)(3).)

has communicated with a local, state or federal government agency to express his or her support for a payment to be made to a local government agency within the legislator's district and the payment is used by the local government agency for official agency business within the district.

### FACTS

You represent several members of the Legislature. As part of their legislative duties, these members frequently engage in efforts to obtain support from local, state, and federal government agencies on behalf of government agencies within their legislative districts. For example, a member of the Legislature might write a letter to the federal Department of Transportation or to Caltrans on behalf of a city in the member's district to support a request for transportation funding for a new bridge, or a member may contact a county agency in support of an application for a grant to a school district within the member's district. In each of these cases, the member is carrying out his or her official duties and the funds are used for official agency business within the member's legislative district.

### ANALYSIS

Section 82015(b)(2)(B)(iii) states that if an individual or entity, at the behest<sup>3</sup> of an elected officer, makes monetary or in-kind payments<sup>4</sup> totaling \$5,000 or more in a calendar year for a legislative, governmental or charitable purpose, that officer has to file a report detailing those payments with his or her public agency within 30 days after reaching the \$5,000 threshold and each 30 days thereafter for additional donations by the same donor.<sup>5</sup> The report is filed on FPPC Form 803, entitled "Behested Payment Report." Thus, as a general rule, in instances when a legislator or any local or state elected officer requests that a person make any type of payment to another person related to a legislative, governmental or charitable purpose, that payment is reportable by the officer on Form 803 if its value is \$5,000 or more.

However, Regulation 18215.3(c) provides that a payment behested by an elected officer and made by a local, state or federal government agency is not subject to reporting under Section 82015(b)(2)(B)(iii) if "that payment will be used in the regular course of official agency business of the elected officer[ 's agency]." Your question essentially asks whether this exception applies when a member of the Legislature communicates a request that a local, state or federal government agency make a payment in the regular course of its own agency business to a local government agency in the legislator's district, and the payment is used in the regular course of its own agency's business. The issue we must address, then, is whether, for purposes of Regulation

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<sup>3</sup> Regulation 18215.3(a) defines "behest" for purposes of Section 82015(b)(2)(B)(iii) as "under the control or at the direction of, in cooperation, coordination, consultation, or concert with, at the request or suggestion of, or with the express, prior consent of" the elected officer.

<sup>4</sup> Section 82044 defines the term of payment broadly, to mean "a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible."

<sup>5</sup> Section 82015(b)(3) provides a similar requirement for members of the Public Utilities Commission.

18215.3(c), such a payment is being used in the regular course of official agency business of the Legislature.

Besides working on legislation, it is well-known that legislators have traditionally been expected to assist local agencies within their legislative districts in obtaining government funding for local government agency projects. Thus, when a legislator acts to achieve this purpose, he or she is acting in the regular course of legislative business and bringing benefits, through the affected local government agency, to the state citizens whom he or she represents as constituents. As such, we view the payments made in this context as being used in the regular course of business of not only the government agencies that make or receive the payments, but also in the regular course of legislative business. Accordingly, we conclude that these payments fall under the exception in Regulation 18215.3(c) and are therefore not behested payments subject to reporting under Section 82015(b)(2)(B)(iii).

Please note, however, that not all payments an elected officer “behests” from a government agency fall under the exception in Regulation 18215.3(c). Payments from one government agency to another government agency normally benefit the public at large and, therefore, the government agency of the elected officer who “behests” the payment. But a payment from a government agency to a private individual or entity, such as through a government grant or contract, will not normally fall into this category. This is so because, while there may be a general benefit to the public in this situation, there is also a benefit to a specific, identified private person. We believe the Legislature, in adding the behested payment reporting requirement to the Act, intended to capture situations in which the official is making the behest to specifically benefit private individuals or entities.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Scott Hallabrin  
Counsel, Legal Division

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